

STATE OF MICHIGAN
COURT OF APPEALS

TRAFFIC SAFETY ASSOCIATION OF
MACOMB COUNTY, INC.

UNPUBLISHED
July 19, 2005

Petitioner-Appellant,

v

CITY OF FRASER,

Respondent-Appellee.

No. 252269
Tax Tribunal
LC No. 00-029863

Before: O’Connell, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Petitioner appeals the determination of the Michigan Tax Tribunal which denied petitioner’s motion for cost. We affirm. This case is being decided without oral argument under MCR 7.214(E).

I. FACTS

Petitioner was incorporated as a non-profit corporation in 1965, and provides numerous safety programs and services to individuals, schools, courts, community agencies, and surrounding communities. Included among the programs and services provided are classes on alcohol, tobacco, and drug awareness; defensive driving classes; school-crossing guard training; and programs promoting bicycle helmet use and proper use of child safety seats in motor vehicles. Since 1965, petitioner has been exempt from federal income taxes due to its 501(c)(3) status¹ and from state sales, use, and personal property taxes.

In March 2001, petitioner purchased property to serve as its principal offices, including the location where services were provided to its clients. Petitioner requested exempt status from ad valorem taxes on the property and supplied respondent with documentation showing compliance with the standards for charitable purposes. Respondent denied the requested exemption, citing and relying on recent decisions of the Tax Tribunal. The Board of Review denied petitioner’s petition for review in April 2002 for similar reasons.

¹ 26 USC 501(c)(3).

In June 2002, petitioner appealed to the Tax Tribunal. Petitioner supplied the tribunal with documentation detailing these programs and services provided to the community that petitioner asserted allowed it to request tax exemption as a charitable organization. Respondent answered, agreeing that petitioner occupies its property solely for the purposes for which it was incorporated, but stating that respondent was unable to verify many of petitioner's claims relating to charitable purposes. In a motion for summary disposition brought under MCR 2.116(C)(9) and (C)(10), petitioner stated that there was no dispute over material fact, that it had complied with all of the statutory requirements for tax exemption under MCL 211.7o, and that respondent had failed to state a valid defense. Respondent replied that petitioner did not occupy the property for the sole purpose stated in petitioner's articles of incorporation and thus did not meet the requirements of MCL 211.7o.

On August 27, 2003 the Tax Tribunal issued an order granting summary disposition to petitioner, concluding that petitioner owned and occupied its property as a non-profit organization from which it provided services that benefited the community as a whole and lessened the burden of government, thus meeting the charitable test for exemption pursuant to MCL 211.7o. See *Michigan United Conservation Clubs v Lansing*, 423 Mich 661, 671; 378 NW2d 737 (1985). However, the tribunal did not award petitioner costs. Petitioner then filed a motion to request costs, which was denied, and a motion for reconsideration, which was also denied. In denying both the motion to request costs and the motion for reconsideration, the tribunal concluded that respondent's defense to petitioner's motion for summary disposition was not frivolous.

II. STANDARD OF REVIEW

Absent fraud, our review of decisions of the Tax Tribunal is limited to deciding whether the tribunal made an error of law or applied an erroneous legal principle. *Catalina Marketing Sales Corp v Dep't of Treasury*, 470 Mich 13, 18-19; 678 NW2d 619 (2004); *ProMed Healthcare v Kalamazoo*, 249 Mich App 490, 492; 644 NW2d 47 (2002). A decision of the tribunal is an error of law if "not supported by competent, material, and substantial evidence." *Comstock Village Ltd Dividend Housing Ass'n v Comstock Twp*, 168 Mich App 755, 759; 425 NW2d 702 (1988). Similarly, the tribunal's factual findings are final when they are supported by "competent, material, and substantial evidence of the whole record." *Catalina Marketing*, *supra* at 19; *ProMed Healthcare*, *supra* at 492. Substantial evidence is defined as "more than a scintilla of evidence, though it may be substantially less than the preponderance of evidence necessary for most civil cases." *Comstock Village*, *supra* at 759. The tribunal's adherence to its own rules is reviewed for an abuse of discretion, *Herald Co Inc v Tax Tribunal*, 258 Mich App 78, 88; 669 NW2d 862 (2003); *Perry v Vernon Township*, 158 Mich App 388, 392; 404 NW2d 755 (1987), as is the denial of a motion for reconsideration, *Herald Co Inc*, *supra* at 82.

III. ANALYSIS

In denying petitioner's motion to request costs, the Tax Tribunal relied on TTR 205.1145(1) and MCR 2.625. In its motion for reconsideration, petitioner argued that TTR 205.1111(4) authorized the tribunal to apply the Michigan Court Rules and award costs because respondent's defense was frivolous. The Tax Tribunal denied petitioner's motion for reconsideration, stating that while the tribunal rules allow the application of the court rules if

there is no tribunal rule that applies, TTR 205.1145 specifically addresses the award of costs in a final disposition.

TTR 205.1145(1) states that “the tribunal may, upon motion or upon its own initiative, allow a prevailing party in a decision or order to request costs.” MCR 2.625(A)(1) states, “Costs will be allowed to the prevailing party in an action, unless prohibited by statute or by these rules or unless the court directs otherwise, for reasons stated in writing and filed in the action.” MCR 2.625(A)(2) states that “if the court finds on motion of a party that an action or defense was frivolous, costs shall be awarded as provided by MCL 600.2591.” MCL 600.2591 provides that an action or defense is frivolous if it meets one or more of the following conditions:

(i) The party’s primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.

(ii) The party had no reasonable basis to believe that the facts underlying that party’s legal position were in fact true.

(iii) The party’s legal position was devoid of arguable legal merit. [MCL 600.2591(3)(a)(i-iii).]

We conclude that the Tax Tribunal did not err in relying on its own administrative rules to exercise its discretion in determining whether to grant petitioner’s request for costs. As the tribunal correctly notes, its rules, augmented by the court rules in the absence of a specific administrative rule, govern procedure and practice before the tribunal. TTR 205.1111(1), (4). Accordingly, the tribunal correctly concluded that it was not bound to follow the court rules where it had an administrative rule specifically addressing the award of costs. TTR 205.1145(1).

As for the issue of the applicability of the charitable exemption, MCL 211.7o provides that the property in issue must be “owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which it was incorporated.” MCL 211.7o. In determining the purpose for which a petitioner uses its property, the petitioner’s articles of incorporation are considered. *Holland Home v Grand Rapids*, 219 Mich App 384, 401; 557 NW2d 118 (1996). Consideration is also given to “whether the organization’s activities, taken as a whole, constitute a charitable gift for the benefit of the general public without restriction or for the benefit of an indefinite number of persons.” *Moorland Township v Ravenna Conservation Club, Inc*, 183 Mich App 451, 458; 455 NW2d 331 (1990). A charitable gift is given for the benefit of an infinite number of persons where it “bring[s] their minds or hearts under the influence of education or religion, . . . relieve[s] their bodies from disease, suffering or constraint, . . . assist[s] them to establish themselves for life, . . . or other wise lessen[s] the burdens of government.” *Michigan United Conservation Clubs v Lansing*, 423 Mich 661, 671; 378 NW2d 737 (1985) (citation, citation reference, and emphasis omitted). The criteria for what constitutes a “lessening of the burden borne by government” depend on the facts of each case. *OCLC Online Computer Library Center, Inc v Battle Creek*, 224 Mich App 608, 617; 569 NW2d 676 (1997). The tribunal has discretion in deciding how to weigh the evidence presented. *Comstock Village, supra* at 760.

Here, the tribunal detailed its consideration of the evidence provided by petitioner when it issued the order granting petitioner's motion for summary disposition. Similarly, in issuing its order denying petitioner's motion to request costs, the tribunal stated that it had reviewed the briefs submitted by the parties and the file before concluding that respondent's defense was not frivolous. Considering that factual findings of the tribunal are conclusive if supported by substantial evidence in the entire record, and given the citation to evidence in the record made by the tribunal, we see no error of law requiring reversal. See *Comstock Village, supra*, 168 Mich App 759.

Affirmed.

/s/ Peter D. O'Connell

/s/ Bill Schuette

/s/ Stephen L. Borrello